

Planning Committee: 10 October 2017

Item Number: URGENT

Application No: W/14/0967

Town/Parish Council: Warwick

Case Officer: Gary Fisher

01926 456502 gary.fisher@warwickdc.gov.uk

Land North of Gallows Hill, Warwick, CV34 6SJ

Development of up to 425 residential dwellings (Use Class C3), medical centre, community hall, formal and informal green spaces, sports and recreation provision, structural landscaping, new roads, footpaths and cycle ways, site access and ancillary works (outline application including details of access)..

**Variation of Section 106 Agreement in relation to
the transfer of land**

FOR Warwick District Council

INTRODUCTION

This report relates to the above planning permission which was granted on 3 April 2015 (reference W/14/0967) and subsequently varied (W/17/0988) to amend the location of the site access from Gallows Hill. Both permissions are subject to a Section 106 Agreement which imposed a range of obligations on the developer.

Under the existing Section 106 Agreement, the County Council is prevented from developing a section of its land for a period of five years, in order to provide the District Council (as part of its estates function) with an opportunity to take ownership of it in order to bring forward the construction of a community stadium and associated enabling development.

This site now contains an area of land allocated for a community stadium and associated uses in the Local Plan. Should that proposal be progressed, it will require planning permission in its own right.

As work has been undertaken to progress the project since the Section 106 Agreement was agreed it is considered (by the District Council in its Estates capacity) that the amount of land that would be required to facilitate the delivery of a community stadium should increase, and that the repositioning of the stadium within the wider site relative to that envisaged when the original Section 106 Agreement was drafted may be necessary. This would potentially require other revisions to the positioning of infrastructure within the site. These changes have been discussed in principle with the County Council and it is considering its position. The purpose of this report is to seek the agreement of revisions to the Section 106 agreement to enable those options to be progressed.

Further, under the original Section 106 Agreement, there is some ambiguity over when the five year "safeguarding" period begins, and the agreement provides that the freehold ownership of the land will not be transferred to the District

Council until after the Stadium has been completed. It has been agreed that the District Council (in its Estates role) should have the option of taking freehold ownership of the stadium land at any time during a period of three years from the date of the varied Section 106 Agreement, provided that it has already obtained planning permission for the stadium.

It has also been agreed that, if work on the Community Stadium is commenced before the development of the County Council's adjacent land, then there will be a need for a right of entry on to the County Council's remaining Land in order to provide servicing to the Stadium Land and to construct the spine road to facilitate access. In the event that this is necessary, then it is proposed that the County Council will be obliged to reimburse the District Council for the reasonable costs incurred in servicing the site and constructing the spine road. These costs will be payable when the County Council commences development on its land or disposes of it, whichever is earlier.

Members may be aware that the District and County Councils are in advanced negotiations in respect of the sale by the County of the Stadium Land to the District Council and the remainder of its land to Waterloo Housing Group. In the event that the sale to the District Council proceeds, then the provisions relating to the stadium land in the existing Section 106 Agreement won't be required, but it is necessary to ensure that the Agreement is clear and effective in order to protect the position of both Councils should the purchase not proceed.

The Section 106 Agreement makes provision for the normal Section 106 contributions in respect of infrastructure such as Education, Health and Highways. It should be noted that this variation relates solely to the transfer of the Stadium Land to the District Council and it is not proposed to amend any of the contributions towards infrastructure. However, the District Council is seeking an amendment to the Agreement to provide that if the stadium land is transferred to the District Council and the stadium is not constructed, then the District Council, as landowner, may seek to develop it or sell it on for housing. Again, the County Council is willing to consider agreeing to this variation, provided that satisfactory consequential amendments can be agreed that safeguard the position of both parties.

Whether or not the stadium project proceeds, the section 106 agreement envisages a situation in which the County will be splitting its land and selling one part to the District Council and the remainder to a housing developer. Accordingly, the planning obligations in the existing Section 106 Agreement will need to be distributed proportionately between the District and County Councils (or their successors in title) and in a manner which avoids development on either part being frustrated by a failure to deliver infrastructure on the other part. A varied planning agreement would meet these objectives.

Depending on what is agreed with the County Council on the outstanding matters, it may be necessary to reach agreement on certain consequential matters such as the impact of the distribution of the planning obligations on the valuation and pricing mechanism for the land. However, these are commercial matters rather than planning considerations and, as such, delegated authority is sought for officers to agree them.

The test to be applied when deciding whether to modify a Section 106 obligation is whether the obligation would serve its purpose “equally well” as modified. As none of the contributions towards infrastructure are being amended, and it is considered that the changes in respect of the proposed Community Stadium will serve to increase the planning benefits arising from the transfer of the stadium land to the District Council, officers are of the view that the test is satisfied

RECOMMENDATION

Planning Committee are recommended to authorise the variation of the Section 106 agreement in order to;

- (subject to the agreement of the County Council) reflect the potential for the proposed changes in the size and location of the land to be safeguarded for a Community Stadium, and the new location of the Education Land
- provide that the stadium land will be “safeguarded” for a period of three years from the date of the varied Section 106 Agreement, during which time the District Council may purchase the land provided that it has obtained planning permission for the development of a community stadium.
- reflect the fact that, if the stadium land is transferred to the District Council, the overall site will have been split, in which case the planning obligations will be attributed proportionately between the parties in a manner which avoids development on either part being frustrated by a failure to deliver infrastructure on the other part.
- (subject to the agreement of the County Council) if the land is not used for a community stadium or for housing then it may be used for another purpose with the consent of the neighbouring landowner (such consent not to be unreasonably withheld) subject to any required planning permission.
- give the District Council a right to enter the County Council’s land to install services to the stadium land and to construct all or part of the spine road should it wish to commence development of the stadium before the County Council’s land is developed, and to provide for reimbursement of the District Council’s reasonable costs in this respect
- correct any minor typographical or drafting errors in the original Agreement
- provide for any consequential amendments required as a result of the changes set out above.

RELEVANT POLICIES

- National Planning Policy Framework

Adopted Local Plan

- DS14

SUMMARY / CONCLUSION

The proposed changes to the Section 106 Agreement are considered to be in accordance with the Council's policies and to serve the planning purposes of the Agreement equally well as the original version. It is therefore recommended that the Section 106 Agreement is amended as requested.